

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12

AMERICAN SALES & MANAGEMENT
ORGANIZATION, LLC d/b/a EULEN AMERICA

Respondent,

and

NLRB CASE NO.: 12-CA-163435

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 32BJ,

Charging Party.

**RESPONDENT'S AMENDED EXCEPTIONS TO THE ADMINISTRATIVE LAW
JUDGE'S DECISION AND RECOMMENDED ORDER**

BRIAN KOJI,
bkoji@anblaw.com
Florida Bar No. 0116297
ALLEN, NORTON, & BLUE, P.A.
Hyde Park Plaza – Suite 225
324 South Hyde Park Avenue
Tampa, Florida 33606-4127
Ph: (813) 251-1210
Fax: (813) 253-2006

JASON MILLER
jmill@anblaw.com
Florida Bar No. 118336
ALLEN, NORTON, & BLUE, P.A.
121 Majorca Ave. Suite 300
Coral Gables, Florida 33134
Ph: (305) 445-7801
Fax: (305) 442-1578

The Respondent, American Sales & Management Organization, LLC d/b/a Eulen America, hereby files its Amended Exceptions to the ALJ's decision in the above-captioned matter, which was issued on January 30, 2018. Eulen America respectfully requests the NLRB to rule that Eulen America is under the exclusive jurisdiction of the RLA. Alternatively, Eulen America respectfully requests the NLRB to seek an advisory opinion from the National Mediation Board (NMB) as to whether Eulen America is subject to the RLA. Thus, exceptions are taken to the following findings, analysis, and conclusions or lack thereof:

1. To the conclusion, "Board has jurisdiction and that the Respondent's discharge of Alexandre and its refusal to rehire her violated the Act." ALJ pg. 2 ¶ 8-9.¹ Similarly, "[t]he Respondent has admitted the interstate commerce facts necessary to establish Board jurisdiction assuming that it does not fall under the RLA jurisdiction, and I so find." ALJ pg. 4 ¶ 29-30.

2. To the ALJ's example regarding Ms. Kendrick's testimony which states, "[f]or example, on direct examination, when she was asked how often airlines contact Eulen over Eulen employee issues, whether discipline, complaints or performance, she replied, 'seldom,' and could recall only one airline that had done so. And, on cross-examination by the Union about airline staff contact with Eulen America employees, she volunteered that 'our employees do not have communications with the client; it's understood.'" ALJ pg. 3 ¶ 45-46; pg. 4 ¶ 1-4. The ALJ's decision ignores record evidence and/or misstates relevant facts concerning the above-mentioned airline contact with Eulen America. Tr. 576-577.²

3. To the finding that Eulen America only provides Delta Airlines with cabin cleaning services. The ALJ found, "(3) Delta Airlines (Delta) – cabin services, T2." ALJ pg. 4 ¶ 43. The

¹ALJ pg. __ ¶ __ refers to the page number and paragraph number of the ALJ's decision.

² Tr. __: __ refers to the page number and line number of the pertinent hearing transcript.

ALJ's decision ignores record evidence and/or misstates relevant facts concerning the services Eulen America provides to Delta Airlines. Tr. 571:5-10; Tr. 562:3-6.

4. To the finding, "Eulen's supervisors generate their work schedules (see Jt. Exh. 2)." Similarly, "Eulen's supervisors generate and publish their work schedules." ALJ pg. 5 ¶ 33-34; ¶ 39-40. The ALJ's decision ignores record evidence and/or misstates relevant facts concerning work schedules. Tr. 513:7-13.

5. To the finding, "[c]ontracts in the record from four of the six carriers contain provisions explicitly stating in one way or another that Eulen is solely responsible for the assignment, supervision and direction of its employees and how they perform their work. See Jt. Exh. 6 at 19, (AA); Jt. Exh. 10 at 3, 4; Jt. Exh. 11 at 2 (Delta); Jt. Exh. 13 at 12 (JetBlue); and Jt. Exh. 15 at 3, 5 (Spirit)." ALJ pg. 6 ¶ 4-8. The ALJ's decision ignores record evidence and/or misstates relevant facts concerning the various airline carrier contracts in the record. Jt. Ex. 6 pg. 1 of 24; pg. 18 of 24; Jt. Ex. 7 pg. 4-11 of 18; pg. 14-18 of 18 (American Airlines);³ Jt. Ex. 9 pg. 2 of 7, Section 3; Jt. Ex. 26 (Jan. 2013 IATA) pg. 20-22 of 61; pg. 24-27 of 61 (Bahamasair); Jt. Ex. 10 pg. 2 of 80; pg. 40 of 80; pg. 44 of 80; pg. 47 of 80; Jt. Ex. 12 pg. 13 of 21; pg. 18-21 of 21 (Delta Airlines); Jt. Ex. 14 pg. 5 of 11 (JetBlue); Jt. Ex. 15 pg. 1 of 10; Jt. Ex. 25 (Jan 2005 IATA) pg. 27-29 of 39 (Spirit Airlines) ; Jt. Ex. 17 pg. 1-15 of 29 (WestJet).

6. To the ALJ's citation to "Jt. Exh. 10 at 3, 4; Jt. Exh. 11 at 2 (Delta)" and then the ALJ's assertion in the following sentence which states, "[t]he Delta contract specifically states that Eulen is an independent contractor and that Delta has no employer role over Eulen's employees." ALJ pg. 6 ¶ 7-9. The ALJ's decision ignores record evidence and/or misstates relevant facts

³Jt. Ex. __ pg. __ of __ refers to the exhibit number and page number of the joint exhibit the parties jointly introduced into evidence in this matter.

concerning the various airline carrier contracts in the record and the services Eulen America provides Delta Airlines at the FLL station. Tr. 561:3-6; Tr. 571:5-10.

7. To the finding, “WestJet contract and the standard ground handling agreement that govern the services that Eulen provides to Bahamas (Jt. Exh. 9) do not specifically address those matters [Eulen is solely responsible for the assignment, supervision and direction of its employees and how they perform their work].” ALJ pg. 6 ¶ 9-11. The ALJ’s decision ignores record evidence and/or misstates relevant facts concerning services provided to WestJet and/or Bahamasair. Jt. Ex. 17 pg. 1-15 of 29; Jt. Ex. 17 pg. 17-18 of 29 (WestJet); Jt. Ex. 9 pg. 2 of 7, Section 3 - Jt. Ex. 26 (Jan. 2013 IATA) pg. 20-22 of 61; pg. 24-27 of 61 (Bahamasair).

8. To the finding, “Both Gayle DeFrancesco of AA and William Rose of Spirit testified unequivocally that their respective airlines do not dictate staffing levels and that their supervisors have no supervisory role over Eulen’s employees, including assignments, direction, authorization of overtime, or discipline.” ALJ pg. 6 ¶ 13-16. The ALJ’s decision ignores record evidence and/or misstates relevant facts concerning the testimony of Gayle DeFrancesco and William Rose. Tr. 289:4-7; Tr. 290:16-25; Tr. 313:19-25; Tr. 314:1-9; Tr. 237-238.

9. To the finding that Mr. Rose “has [n]ever requested that a Eulen employee be transferred from serving their airlines.” ALJ pg. 6 ¶ 16-17. Similarly, “Rose complained on one occasion about a Eulen dispatcher, whom Kendrick transferred from Spirit, but he made no recommendation for discipline (see R. Exh. 3 at 2).” ALJ pg. 6 ¶ 21-22. The ALJ’s decision ignores record evidence and/or misstates relevant facts concerning the testimony of William Rose. Resp. Ex. 3 pg. 2 of 10;⁴ Tr. 223-224; Tr. 538:14-18.

⁴Resp. Ex. ___ pg. ___ of ___ refers to Eulen America’s exhibit number and page number.

10. To the finding, “[a]t FLL, AA has never exercised its reserved contractual right (Jt. Exh. 6 at 19) to interview and approve Eulen’s station management and other employees.” ALJ pg. 6 ¶ 19-20. The ALJ’s decision ignores record evidence and/or misstates relevant facts concerning the American Airlines reserved contractual right. Jt. Ex. 6 pg. 19 of 24.

11. To the finding, “Kendrick’s testimony substantially comported with theirs. Thus, Eulen’s policy is that its employees do not have communications directly with airlines’ personnel...” ALJ pg. 6 ¶ 24-26. The ALJ’s decision ignores record evidence and/or misstates relevant facts concerning airline contact and communication with Eulen America and employees. Tr. 576-577.

12. To the finding, “on some occasions, an airline has complained about the performance of a Eulen employee and/or requested that Eulen remove a particular employee from servicing it as a customer. In such cases, Kendrick has conducted her own investigation before taking any action. She did not cite any instances when a carrier has recommended any disciplinary action be taken against an employee.” ALJ pg. 6 ¶ 28-33. The ALJ’s decision ignores record evidence and/or misstates relevant facts concerning airline carrier complaints, their request to remove employees, and investigations. Resp. Ex. 3 pg. 1 of 10; Tr. 537:1-21; Resp. Ex. 3 pg. 6-8 of 10; Tr. 540-541; Resp. Ex. 3 pg. 2 of 10; Tr. 223-224; Tr. 538:14-18; Tr. 538:19-25; Tr. 539:1-16; Tr. 565:17-25; Tr. 566:1; Resp. Ex. 3 pg. 3 of 10; GC Ex. 8(a)-(b);⁵ Tr. 108:21-24; Tr. 109:1-4; Tr. 283:15-20; Tr. 314:15-18; Resp. Ex. 2; Resp. Ex. 11; Tr. 529.

13. To the finding, “Respondent’s Exhibit 3 reflects a number of carrier complaints. As a result, Kendrick terminated one employee for tardiness.” ALJ pg. 6 ¶ 34-38. The ALJ’s decision

⁵GC Ex. __ refers to the Counsel for the General Counsel’s exhibit number.

ignores record evidence and/or misstates relevant facts concerning the termination of an employee for tardiness. Resp. Ex. 3 pg. 1 of 10; Tr. 537:1-21.

14. To the finding, “Respondent’s Exhibit 3 reflects a number of carrier complaints. As a result...Kendrick terminated...two supervisors and an employee as a result of a WestJet investigation that concluded they had been stealing.” ALJ pg. 6 ¶ 34-38. The ALJ’s decision ignores record evidence and/or misstates relevant facts concerning the WestJet investigation and termination. Resp. Ex. 3 pg. 6-8 of 10; Tr. 540-541.

15. To the finding, “Respondent’s Exhibit 3 reflects a number of carrier complaints. As a result Kendrick...offered to transfer two employees to jobs with other carriers (both voluntarily resigned).” ALJ pg. 6 ¶ 34-38. The ALJ’s decision ignores record evidence and/or misstates relevant facts concerning the transfer of two employees. Resp. Ex. 3 pg. 2 of 10; Tr. 223-224; Tr. 538:14-18; Tr. 538:19-25; Tr. 539:1-16; Tr. 565:17-25; Tr. 566:1; Resp. Ex. 3 pg. 3 of 10.

16. To the finding, “[i]n at least two situations, Kendrick issued lesser discipline following a carrier complaint, and the employee was transferred to work for another airline. In the first, Bahamas complained about the rude behavior of counter agent Vasquez (mentioned above), as a result of which Oviedo issued him a written warning, and he was transferred to AA (G.C. Exh. 8). Oviedo wrote in the discipline that although the offense was grounds for termination, ‘[W]e believe on[sic] giving our employees a second opportunity,’ and Kendrick testified that this sentiment was communicated to Vasquez in the meeting that she and Oviedo conducted with him.” ALJ pg. 6 ¶ 40-46; pg. 7 ¶ 1. The ALJ’s decision ignores record evidence and/or misstates relevant facts concerning Bahamasair’s complaint about counter agent Vasquez. GC Ex. 8(a)-(b); Tr. 108:21-24; Tr. 109:1-4.

17. To the finding “[t]he following month, AA complained about Vasquez’ inappropriate behavior as a janitor, resulting in Kendrick suspending him until further investigation (R. Exh. 2). Ultimately, he was not terminated.” ALJ pg. 7 ¶ 1-3. The ALJ’s decision ignores record evidence and/or misstates relevant facts concerning American Airlines complaint about Vasquez. Tr. 283:15-20; Tr. 314:15-18; Resp. Ex. 2.

18. To the finding “[i]n at least two situations, Kendrick issued lesser discipline following a carrier complaint, and the employee was transferred to work for another airline...[i]n the second (see R. Exh. 11), Bahamas complained about the conduct of a bag room employee, who received a written warning and was transferred to WestJet cabin cleaning.” ALJ pg. 7 ¶ 3-5. The ALJ’s decision ignores record evidence and/or misstates relevant facts concerning Bahamasair’s complaint. Resp. Ex. 11; Tr. 529.

19. To the finding, “Kendrick could recall only one instance when a carrier has made a recommendation for promotion; when an assistant manager at Bahamas recommended that ramp lead Brian Bolt be promoted to a supervisor when the position opened up at Bahamas (see R. Exh. 8). As to hiring, Kendrick could recall only one time that a carrier has recommended that Eulen hire someone; when Ginella Alvarez of Delta management recommended the hiring of John Vixamar, a Delta employee. Kendrick made the decision to accept both recommendations.” ALJ pg. 7 ¶ 7-12. The ALJ’s decision ignores record evidence and/or misstates relevant facts concerning the promotion. Tr. 509:18-20; Tr. 510:4-12; Tr. 559:8-14; Resp. Ex. 8.

20. To the finding, “[a]s far as regular audits of Eulen’s employees performing cabin cleaning, Spirit tries to have supervisors audit turnaround flights (turns) weekly and overnight aircrafts (‘remain over nights’ or RONS) once or twice a week, using a set check-list criteria established by Spirit’s cabin-cleaning department.” ALJ pg. 7 ¶ 14-17. The ALJ’s decision ignores

record evidence and/or misstates relevant facts concerning the audit and set check-list criteria. Tr. 239-240; Tr. 241:1-7.

21. To the finding, “AA does not conduct regular audits or evaluations of Eulen’s work as it has the right to do under their contract.” ALJ pg. 7 ¶ 21-23. The ALJ’s decision ignores record evidence and/or misstates relevant facts concerning American Airlines audits or evaluations of Eulen America’s work. Tr. 523.

22. To the finding, “[t]he contracts that Eulen has with carriers provide that Eulen is responsible for ensuring that its employees receive proper training as required by the particular carrier. See Jt. Exh. 6 at 19, Jt. Exh. 7 at 4 (AA); Jt. Exh. 10 at 3, Jt. Exh. 11 at 2, 4 (Delta); Jt. Exh. 13 at 12 (JetBlue); Jt. Exh. 15 at 6 (Spirit); and Jt. Exh. 17 at 14 (WestJet).” ALJ pg. 7 ¶ 31-33. The ALJ’s decision ignores record evidence and/or misstates relevant facts concerning training. Tr. 472:12-19; Tr. 462:14-19; Tr. 463:20-25; Tr. 464:1-4; Tr. 472:12-19.

23. To the finding, “Eulen has its own safety and training manual of over 900 pages that covers training not mandated by its carrier-clients (Jt. Exh. 28 is the table of contents and chapter 1). Safety matters are handled solely by Eulen and not the carriers (ibid at 34, 35). When Eulen’s safety and training manual provided more stringent standards from ramp agents than Delta’s training required, Eulen requested and received from Delta permission to impose them.” ALJ pg. 7 ¶ 35-39. The ALJ’s decision ignores record evidence and/or misstates relevant facts concerning training and the safety and training manual. Tr. 472:12-29; Tr. 462:14-19; Tr. 463:20-25; Tr. 464:1-4; Tr. 462-463.

24. To the finding, “[s]afety matters are handled solely by Eulen and not the carriers (ibid at 34, 35).” ALJ pg. 7 ¶ 36-37. The ALJ’s decision ignores record evidence and/or misstates relevant facts concerning training and safety matters. Tr. 462-464; Tr. 472:12-19.

25. To the finding, “[w]hen Eulen’s safety and training manual provided more stringent standards for ramp agents than Delta’s training required, Eulen requested and received from Delta permission to impose them.” ALJ pg. 7 ¶ 37-39. The ALJ’s decision ignores record evidence and/or misstates relevant facts concerning training and the safety and training manual. Tr. 469-470; Tr. 472:12-19.

26. To the finding, “Delta establishes the training path for cabin cleaning and requires Eulen to have a Delta-trained and qualified trainer to conduct some of the training (see R. Exh. 5).” ALJ pg. 7 ¶ 41-42. The ALJ’s decision ignores record evidence and/or misstates relevant facts concerning the Delta Airlines training path and qualified trainer. Tr. 463:13-25; Tr. 464:1-4; Tr. 472:12-19; Resp. Ex. 5 pg. 4 of 6.

27. To the finding, “Both John Foster, Eulen’s national director of corporate safety and compliance, and Kendrick have attended such trainer training (see R. Exh. 6).” ALJ pg. 7 ¶ 43-44; pg. 8 ¶ 1. The ALJ’s decision ignores record evidence and/or misstates relevant facts concerning trainer training. Tr. 433-434; Tr. 453-455; Resp. Ex. 6 pg. 15-17 of 33.

28. To the finding, “[s]ome Delta training is computer-based (CBT), using Delta computers in Delta’s space at FLL.” ALJ pg. 8 ¶ 1-2. The ALJ’s decision ignores record evidence and/or misstates relevant facts concerning Delta Airlines CBT training. Tr. 434-435; Tr. 456-457.

29. To the finding, “[o]ther carriers also require Eulen representatives to undergo carrier training to qualify them as trainers of other Eulen employees.” ALJ pg. 8 ¶ 2-4. The ALJ’s decision ignores record evidence and/or misstates relevant facts concerning training. Tr. 449-452; Tr. 490-491; Jt. Ex. 17 pg. 14-17 of 29.

30. To the finding, “[o]f the training that Delta requires, including annual qualification training, probably 60 percent is mandated by various Federal agencies, as opposed to the Delta’s

own requirements. [fn. 7]” ALJ pg. 8 ¶ 6-10. The ALJ’s decision ignores record evidence and/or misstates relevant facts concerning Delta Airlines training. Tr. 439-440; Tr. 444-445; Resp. Ex. 6.

31. To the finding, “AA does not require any training for the jobs that Eulen employees perform.” ALJ pg. 8 ¶ 12. The ALJ’s decision ignores record evidence and/or misstates relevant facts concerning American Airlines training. Jt. Ex. 6 pg. 18-19 of 24.

32. To the finding, “Spirit provides a module for Eulen for a CBT program that Eulen has a trainer schedule and conduct yearly in its own location using Spirit computers.” ALJ pg. 8 ¶ 12-15. The ALJ’s decision ignores record evidence and/or misstates relevant facts concerning Spirit Airlines CBT training. Tr. 449-450.

33. To the finding, “[a]ll Eulen employees at FLL wear Eulen uniforms and name tags (see GC Exh. 16), with the exception of WestJet passenger service or counter agents (14, including 2 leads), who wear WestJet uniforms and name tags (see R. Exh. 7). WestJet has no other counter agents.” ALJ pg. 8 ¶ 24-27. The ALJ’s decision ignores record evidence and/or misstates relevant facts concerning WestJet uniforms. Tr. 507-508; Jt. Ex. 17 pg. 15 of 29.

34. To the finding, “[s]ome also provide the cleaning solutions; for others, the responsibility is Eulen’s.” ALJ pg. 8 ¶ 32. The ALJ’s decision ignores record evidence and/or misstates relevant facts concerning cleaning solutions and applicable supplies. Tr. 502:10-25; Tr. 503:1-9; Tr. 506:13-19; Jt. Ex. 12 pg. 13 of 21.

35. To the finding, “[n]one of these contractual provisions [audit provisions] make an exception for personnel or employment matters.” ALJ pg. 8 ¶ 38-39. The ALJ’s decision ignores record evidence and/or misstates relevant facts concerning audit provisions. Jt. Ex. 13 pg. 12-13 of 40.

36. To the analysis and conclusion, “[c]oncerning control over the manner in which Eulen conducts business at FLL, the primary role of the carriers is notifying Eulen of flight schedules to ensure that Eulen provides sufficient staffing to perform the services for which it has contracted.” ALJ pg. 15 ¶ 22-24.

37. To the analysis and conclusion, “[t]he airlines play no part in specifying individual employees or when they will work.” ALJ pg. 15 ¶ 24-25.

38. To the analysis and conclusion, “[t]he Respondent’s contracts with carriers and the carriers’ daily schedules dictate how Eulen determines staffing levels and shift assignments. This does not in and of itself establish carrier control over labor relations or how Eulen carries out its contractual services.” ALJ pg. 15 ¶ 25-31.

39. To the analysis and conclusion, “[r]ecent NMB decisions not finding RLA jurisdiction have ‘emphasized in particular the absence of [carrier] control over hiring, firing, and/or discipline.’ ... The control over personnel decisions must be ‘meaningful’ and ‘not just the type of control found in any contract for services’ to establish RLA jurisdiction.” (footnote 14 text is omitted here but excepted to) ALJ pg. 15 ¶ 33-40.

40. To the analysis and conclusion, “Eulen alone approves employees’ overtime hours and time off requests, and Eulen’s supervisors generate their work schedules.” ALJ pg. 16 ¶ 3-4.

41. To the analysis and conclusion, “[n]o airlines supervisors or employees have supervisory authority over Eulen’s employees or can direct their work. Rather, carriers must address any issues with Eulen employees with Eulen management, Kendrick in particular.” ALJ pg. 16 ¶ 4-7.

42. To the analysis and conclusion, “[c]arriers have asked that certain Eulen employees be removed from their operations, but there is no evidence that they have ever recommended any of them be disciplined or fired.” ALJ pg. 16 ¶ 9-10.

43. To the analysis and conclusion, “[w]hen carriers complain about Eulen employees, Kendrick conducts her own investigations before taking any actions, a factor militating against finding carrier control in personnel decisions” ALJ pg. 16 ¶ 11-19.

44. To the analysis and conclusion, “[c]arrier ability to request removal of an employee is not tantamount to control over discipline within the meaning of the RLA, and an employer’s retention and exercise of the option to utilize a removed employee elsewhere militates against finding such control.” ALJ pg. 16 ¶ 19-23.

45. To the analysis and conclusion, “[a]t most, during Kendrick tenure as station manager since February, there was one occasion when a carrier recommended someone be hired and one occasion when a carrier recommended an employee be promoted to a supervisor position. This hardly amounts to meaningful carrier input on hiring or promotion.” ALJ pg. 16 ¶ 25-31.

46. To the analysis and conclusion, “[t]he Respondent (Br. 130) cites two NMB decisions, *Command Security Corp.*, 27 NMB 581 (2000), and *ServiceMaster Aviation Services*, 24 NMB 186 (1997), for the proposition that the carrier’s right under contract to exercise indicia of control is what is critical, not whether the carrier has exercised the right only occasionally or not at all. However, those cases are distinguishable on their facts....” ALJ pg. 16 ¶ 33-43.

47. To the analysis and conclusion, “[i]n sum, the carriers here play no significant role in any personnel decision or the supervision of Eulen’s employees, which authority is vested exclusively in Eulen management and supervision.” ALJ pg. 16 ¶ 45-46; pg. 17 ¶ 1.

48. To the analysis and conclusion, “[a]s the NMB has held, elements of control that are ‘no greater than that found in a typical subcontractor relationship’ are insufficient to establish RLA jurisdiction.” ALJ pg. 17 ¶ 1-5.

49. To the analysis and conclusion, “[i]n terms of training, the contracts provide that Eulen is responsible for ensuring that its employees receive proper training as required by the carrier. At least some of the client airlines train Eulen employees to be trainers for other Eulen employees; airline personnel do not conduct the training. This does not establish carrier control within the meaning of the RLA.” ALJ pg. 17 ¶ 7-11.

50. To the analysis and conclusion, “[f]or CBT, the carrier may provide the training module and computers. However, most of the training that the carriers require is mandated by various Federal agencies and that training is therefore not imposed as a matter of discretion by the airlines. Such training does not constitute carrier control within the meaning of the RLA.” ALJ pg. 17 ¶ 11-15.

51. To the analysis and conclusion, “Delta and WestJet provide Eulen office space, Delta provides a break room for Eulen’s employees, and Delta provides a few pieces of equipment for Eulen employees’ use. Standing alone, these factors are insufficient to establish material control by a carrier. See *Bags*, *ibid.*” ALJ pg. 17 ¶ 17-20.

52. To the analysis and conclusion, “[o]n the other hand, Eulen holds itself out to the public as an employer that provides highly-qualified employees to carriers, and over 90 percent of its employees at FLL wear Eulen uniforms and badges with Eulen identification.” ALJ pg. 17 ¶ 24-27.

53. To the conclusion, “[c]onsidering all of the above factors, I conclude that the Respondent has not met its burden of showing that the carrier exercises the degree of control over

the Respondent at FLL that would remove the Respondent from Board jurisdiction under Section 2(2) of the Act.” ALJ pg. 17 ¶ 31.

54. To the conclusion, “I note in particular the essentially nonexistent role that the airlines play in Eulen’s hiring, disciplining, firing, directing, or supervising its employees.” ALJ pg. 17 ¶ 33-35.

55. To the conclusion, “[t]he Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.” ALJ pg. 22 ¶ 1.

56. To the conclusion, “[b]y the following conduct, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act and violated Section 8(a)(3) and (1) of the Act: discharged and refused to rehire Joanne Alexandre because she engaged in conduct on behalf of the Union.” ALJ pg. 22 ¶ 10-13.

57. To the ALJ’s “Remedy” and “Order” sections of the ALJ’s Decision and the Appendix thereto. ALJ pgs. 22-26.

58. The ALJ’s decision ignores record evidence and misstates relevant facts concerning American Airlines’ control over Eulen America’s operations and employees at the FLL station. Jt. Ex. 6 pg. 1-2 of 24; Jt. Ex. 6 pg. 18-19 of 24; Jt. Ex. 7 pg. 4-11 of 18; pg. 14-18 of 18; Jt. Ex. 8 pg. 1 of 2.

59. The ALJ’s decision ignores record evidence and/or misstates relevant facts concerning Bahamasair’s control over Eulen America’s operations and employees at the FLL station. Jt. Ex. 9 pg. 2 of 7, Jt. Ex. 9 pg. 2 of 7 - Section 3 - Jt. Ex. 26 (Jan. 2013 IATA) pg. 20-22 of 61 - Jt. Ex. 26 (Jan. 2013 IATA) pg. 24-27 of 61; Jt. Ex. 9 pg. 3 of 7; Resp. Ex. 10; Tr. 518-522.

60. The ALJ’s decision ignores record evidence and/or misstates relevant facts concerning Delta Airlines control over Eulen America’s operations and employees at the FLL

station. Jt. Ex. 10 pg. 2 of 80; Jt. Ex. 10 pg. 4-6 of 80; Jt. Ex. 10 pg. 15-16 of 80; Jt. Ex. 10 pg. 40 of 80; Jt. Ex. 10 pg. 44 of 80; Jt. Ex. 10 pg. 47 of 80; Jt. Ex. 12 pg. 3 of 21; Jt. Ex. 12 pg. 5 of 21; Jt. Ex. 12 pg. 8 of 21; Jt. Ex. 12 pg. 11-13 of 21; Jt. Ex. 12 pg. 18-21 of 21; Tr. 514-516; Tr. 556:6-20; Tr. 569; Resp. Ex. 9.

61. The ALJ's decision ignores record evidence and/or misstates relevant facts concerning JetBlue's control over Eulen America's operations and employees at the FLL station. Jt. Ex. 13 pg. 3-4 of 40; Jt. Ex. 13 pg. 11-13 of 40; Jt. Ex. 14 pg. 5 of 11.

62. The ALJ's decision ignores record evidence and/or misstates relevant facts concerning Spirit Airlines control over Eulen America's operations and employees at the FLL station. Jt. Ex. 15 pg. 1 of 10 - Jt. Ex. 25 (Jan. 2004 IATA) pg. 27-29 of 39; Jt. Ex. 15 pg. 2 of 10; Jt. Ex. 15 pg. 5-6 of 10; Jt. Ex. 15 pg. 8-10 of 10; Jt. Ex. 16; Tr. 219:18-23; Tr. 220:6-7; Tr. 225:21-25; Tr. 226:1-4; Tr. 232-233; Tr. 516:11-15; Tr. 517; Tr. 556:6-20.

63. The ALJ's decision ignored record evidence and/or misstates relevant facts concerning WestJet's control over Eulen America's operations and employees at the FLL station. Jt. Ex. 17 pg. 1-19 of 29; Jt. Ex. 17 pg. 21-22 of 29; Jt. Ex. 17 pg. 26-29 of 29; Tr. 450-452; Tr. 490-491; Tr. 496:14-19; Tr. 498-499; Resp. Ex. 3 pg. 4-5 of 10.

/s/ Brian Koji

BRIAN KOJI

bkoji@anblaw.com

Florida Bar No. 0116297

ALLEN, NORTON, & BLUE, P.A.

Hyde Park Plaza – Suite 225

324 South Hyde Park Avenue

Tampa, Florida 33606-4127

Ph: (813) 251-1210

Fax: (813) 253-2006

JASON MILLER

jmill@anblaw.com

Florida Bar No. 118336

ALLEN, NORTON, & BLUE, P.A.
121 Majorca Ave. Suite 300
Coral Gables, Florida 33134
Ph: (305) 445-7801
Fax: (305) 442-1578

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, in addition to filing the foregoing with the Board's e-Filing System, a true and correct copy of the foregoing has been furnished via email on this 29th day of May 2018 to:

JESSICA D. OCHS
Associate General Counsel
Services Employees International Union,
SEIU Local 32BJ
25 West 18th Street
New York, NY 10011
JOchs@seiu32bj.org

CAROLINE LEONARD
Counsel For The General Counsel
National Labor Relations Board
Region 12
201 E. Kennedy Blvd., Ste. 530
Tampa, FL 33602-5824
Caroline.Leonard@nlrb.gov

/s/ Brian Koji
Attorney